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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,556	02/27/2004	Kevin S. Beyer	SVL920030140US1/3026P	7077
29141 7590 12/10/2008 SAWYER LAW GROUP LLP 2465 E. Bayshore Road, Suite No. 406 PALO ALTO, CA 94303				
EXAMINER DARNO, PATRICK A				
ART UNIT		PAPER NUMBER		
2169				
NOTIFICATION DATE		DELIVERY MODE		
12/10/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KEVIN S. BEYER,
ELIZABETH B. HAMEL, BRUCE G. LINDSAY
and
CLARENCE M. PRUETT III

Application No. 10/788,556
Technology Center 2100

Mailed: December 9, 2008

Before PAMELA S. BENNETT, *Review Team Paralegal*
BENNETT, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 5, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

ANSWER, STATUS OF AMENDMENTS

A review of the file finds that the status of the amendments as provided in the Examiner's Answer mailed October 11, 2007 under the heading "Status of Amendments" is unclear and/or is not consistent with the last **entered** amendment of record in accordance with 37 CFR 41.37(c)(1)(iv).

A review of the file finds that an After Final Amendment was filed January 25, 2007. An Advisory Action was mailed February 5, 2007 notifying appellants that the After Final Amendment WAS NOT entered. However, the examiner has not provided the necessary statement as to the status of the After Final Amendment filed January 25, 2007 and/or the examiner's statement regarding the status of the After Final amendment is unclear or incorrect.¹ Specifically, while the Advisory Action mailed February 5, 2007 states that the proposed amendment filed January 31 [sic, 25], 2007 will not be entered, the next page states that the "Examiner withdraws the pending claim objection based on applicants amendments for the following claims: 1, 12-18, 20-23, 26-28, 61-62, 65-71, and 75-77." It should be noted that the Claims Appendix of the Appeal Brief filed June 20, 2007 reflects entry of the January 25, 2007 After Final Amendment and that page 2 of the Examiner's Answer mailed October 11, 2007 states that "[t]he copy of the appealed claims contained in the

¹ The Examiner's Answer mailed October 11, 2007 states that "[t]here are no unentered amendments" [Status of Amendments After Final, pg. 2].

Appendix to the brief is correct.” Clarification regarding the entry status of the January 25, 2007 After Final Amendment is required.

CONCLUSION

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

1) to clarify the entry status of the After Final Amendment filed January 25, 2007;

a) if the After Final Amendment is not entered:

- (1) to notify Appellants to file an amended Appeal Brief which corrects the “Status of Amendments” and “Claims Appendix”;
- (2) for consideration of said amended Appeal Brief;
- (3) to vacate the Examiner’s Answer mailed October 11, 2007 and to generate a new Examiner’s Answer setting forth the correct status of the January 25, 2007 After Final Amendment and to correct other sections of the Answer as may be required; and

2) for such further action as may be required.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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